**LOHMAN HOLDING SDN BHD**

**v.**

**LOH KIM FOH & ANOR**

HIGH COURT MALAYA, IPOH
BALIA YUSOF WAHI JC
[CIVIL SUIT NO: 22-42-03]
24 JULY 2003

***CIVIL PROCEDURE:*** *Injunction - Temporary injunction - Ad interim injunction - Whether valid until final disposal of application proper - Whether automatically lapses on subsequent date of hearing - Jurisdiction of court*

The plaintiff, by an *ex parte* application, sought for a mareva injunction against the defendants. The court then fixed the matter for an *inter partes* hearing on 26 March 2003. On the mentioned date, both parties appeared before the court and consented that the *inter partes* hearing be adjourned to another date. At the same time, the plaintiff applied for an *ad interim* injunction pending the hearing, which was allowed by the court. However, the hearing of the *inter partes* application was not proceeded due to unavoidable circumstances and the matter was further adjourned. At the hearing of the matter on 23 April 2003, the plaintiff raised a preliminary objection that the first defendant was in breach of the mareva injunction in that a certain amount of money had been withdrawn from the account which formed the subject matter of this injunction. Submissions by both parties were heard and the court needed time to consider the issues raised and the matter was further adjourned for decision. Subsequently, the defendants filed an appeal and alleged that this court had erred in postponing the matter and granting the *ad interim* injunction as it should have lapsed and/or expired on the subsequent date when the matter was brought up for hearing.

**Held:**

**[1]** An *ad interim* injunction is meant for the period pending the disposal of the application and it will endure till the final disposal of the application. By the same token it would therefore be superfluous for the court to order and say categorically at each and every postponement (as happened in this case) that the *ad interim* injunction is to continue.

Thus the order of this court made on 23 April 2003 deferring its decision on the preliminary issue and postponing the matter to another date and in not making any order or reference to the *ad interim* injunction was not erroneous and was certainly within the powers of this court to so order. Further, the *ad interim* injunction does not automatically lapse and/ or expire on that date. (p 223 e-g)

*[Order accordingly.]*

**Case(s) referred to:**
*Insas Bhd v. Ayer Molek Rubber Co Bhd [1995] 3 CLJ 328 FC* ***(refd)***
*Jacob Renner (an infant suing through his father and next friend, Gilbert Reinner) & Ors v. Scott King, Chairman of Board of Directors of the International School of Kuala Lumpur & Ors [2000] 3 CLJ 569 HC* ***(refd)***
*Jagjit Singh Khanna v. Dr Rakhal Das Mullick & Anor AIR [1988] Cal 95* ***(refd)***
*RIH Services (M) Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd [2002] 3 CLJ 83 CA* ***(foll)***

**Legislation referred to:**
Rules of the High Court 1980, O. 29

*For the plaintiff - A Selvanathan (Rabinder Singh); M/s Kean Chye & Sivalingam*
*For the defendants - Ravi G (Gary Gomez); M/s Ravi, Beltran & Co*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Balia Yusof Wahi JC:**
By way of an *ex parte* application filed on 19 February 2003 (encl. 2), the plaintiff is seeking for the following reliefs, namely:

(1) Defendan-defendan dihalang sama ada secara sendiri atau oleh pengkhidmatnya atau ejennya atau sebaliknya daripada:

(a) mengambil keluar dari bidangkuasa Malaysia, melepaskan atau berurusan memindahkan keluar dari bidangkuasa sebarang asset mereka yang berada di Malaysia sama ada atas nama sendiri atau tidak dan sama ada dimiliki secara tunggal ataupun bersama setakat mana nilainya tidak melebihi RM12,589,670.98 (Ringgit Malaysia Dua Belas Juta, Lima Ratus Lapan Puluh Sembilan Ribu, Enam Ratus Tujuh Puluh dan Sen Sembilan Puluh Lapan Sahaja); dan

(b) tanpa prejudis kepada (a) di atas, secara khusus mengeluarkan ataupun dalam apa cara jua pun berurus dengan dana daripada akaun-akaun berikut:

| Bank | No. Akaun | Nama pemegang-Pemegang akaun |
|---|---|---|
| Citibank KL | 0-048465-021 | Loh Kim Foh & /atau Wong Kim |
| Citibank KL | 2911204357 & 2910285321 | Loh Kim Foh & /atau Lim Ah See @ Lim Teng Lin |
| Maybank Berhad KL | 514123330914 | Loh Kim Foh & /atau Loh Kaw @ Loh Chee Fah |
| Universal (M) Berhad | Investment Fund | Loh Kim Foh |
| Citibank KL | | Loh Kim Foh dan/atau Loh Mui Fah ataupun mana-mana mereka dan/ atau pihak Ketiga, |

(2) Defendan-defendan dihalang sama ada secara sendiri atau oleh pengkhidmatnya atau ejennya atau sebaliknya daripada:

(a) melepaskan ataupun berurusan ataupun mengurangkan nilai asetnya yang berada di luar Malaysia, khususnya, Republik Singapura sama ada atas nama sendiri atau tidak dan sama ada dimiliki secara tunggal ataupun bersama setakat mana nilainya tidak melebihi Singapore Dollars yang mana nilainya bersamaan dengan RM12,589,670.98; dan

(c) tanpa prejudis kepada (a) di atas, secara khusus mengeluarkan ataupun dan apa cara jua pun berurus dengan dana daripada akaun-akaun berikut:

| Bank | No. Akaun | Nama Pemegang-Pemegang akaun |
|---|---|---|
| Citibank, Singapura | 0-393098-007 | Loh Kim Foh & /atau Wong Kim, & /atau Loh Siew Choong |
| Citibank, Singapura | 0-242138-007 | Loh Kim Foh & /atau Wong Kim, Loh Siew Ngoh |
| Citibank, Singapura | 6-242138-005 | Loh Kim Foh & /atau Wong Kim, Loh Siew Ngoh |
| Citibank, Singapura | | Loh Kim Foh dan/atau Loh Mui Fah ataupun mana-mana mereka dan/atau pihak Ketiga. |

What the plaintiff is asking is basically what is commonly known as a mareva injunction.

For a better appreciation of the issue, I find it necessary to set out in full the chronology of the matter. Upon a certificate of urgency (encl. 4), the hearing of the plaintiff's *ex parte* application was fixed on 10 March 2003 and upon hearing the submissions of counsel for the plaintiff and perusing the affidavit filed in support of the application in encl. 3, this court adjourned the hearing to the next day for decision. When the case was called up for decision on 11 March 2003, beside counsels for the plaintiff, one Mr. Ravi and Miss P'ng appeared for the defendants and request permission of the court to follow the proceedings to which the court acceded to. Their presence were merely to put on record that they are representing the defendants. The decision of this court delivered on that day was to allow the application of the plaintiff in the terms of prayer 1 of encl. 2 and costs was ordered to be in the cause. Being an *ex parte* order, the court accordingly fix the matter for *inter partes* hearing on 26 March 2003 well within the 21 day period as stipulated under O. 29 of the Rules of the High Court 1980.

On 26 March 2003, both parties appeared before me and consented that the hearing of the *inter partes* be adjourned to another date. At the same time the plaintiff also applied for an *ad interim* injunction pending the *inter partes* hearing of the matter. Upon hearing the respective submissions of both parties, the court allowed the plaintiff's application for an *ad interim* injunction and adjourned the matter for *inter partes* hearing to 7 April 2003. On 7 April 2003, the hearing of the *inter partes* application was not proceeded with as the court was hearing a part heard criminal trial No. 45-10-00 and the matter was further adjourned to 23 April 2003 for hearing. Nothing was ordered or said by the court on the *ad interim* injunction granted earlier and neither party raised any issue on the same. In my view, it is trite that the *ad interim* injunction is still valid until the disposal of the application proper. The court also ordered that both parties to submit their written submissions for the court's consideration.

At the hearing of the matter on 23 April 2003, counsel for the plaintiff raised a preliminary objection on the ground that the first defendant was in breach of the mareva injunction granted by this court on 11 March 2003 in that the first defendant was purportedly to have withdrawn a certain amount of money from the account which formed the subject matter of this injunction. The preliminary objection raised by the plaintiff is on the point that a party in contempt should not be heard. Submissions by both parties were heard and the court needed time to consider the issues raised and the matter was accordingly adjourned to 12 May 2003 for decision on the preliminary issues raised by the plaintiff.

I pause here to state that the defendants have filed an appeal against the whole decision of this court made on 23 April 2003. The defendants are alleging that this court has erred in postponing the matter and granting the *ad interim* injunction. It is also their contention that the interim injunction should have lapsed and/or expired on the subsequent date when the matter was brought up for hearing.

For completeness, it must be stated here that in between the dates mentioned earlier, two other interlocutory applications were made by the plaintiff and accordingly dealt with by this court *via* encls. 23 and 40. On the appointed day for the decision on the preliminary issues ie, 12 May 2003, it was inidicated to this court that there were two other applications which has been filed namely an application by the plaintiff for leave for an order of committal against both the defendants and their counsel Mr. Ravindathiran a/l Ganesan (encl. 45) and an application by the defendants for directions

by this court as to the handling of the money amounting to RM1.253 million in the hands and under the control of the first defendant and for a further order that the said sum be approved for the use of the first defendant to settle his debts and other expenses (encl. 53). Upon hearing submissions of parties on the procedure to be adopted in the light of all the pending proceedings, this court makes an order that the hearing of the *inter partes* application be postponed pending the disposal of encl. 45 and this court further ordered that the *ad interim* injunction be extended until the disposal of encl. 2, by way of the *inter partes* hearing. This court also reserved its decision on the preliminary issues raised by the plaintiff earlier. Such is the chequered history of this matter.

As stated earlier, the defendants have filed an appeal against the decision of this court made on 23 April 2003. On that day this court heard the submissions of both parties on a preliminary objection raised by the plaintiff on the ground that the first defendant was in breach of the *ex parte* injunction granted by this court on 11 March 2003. Instead of hearing the *inter partes* application, the hearing on the said date was confined only to this preliminary issue. Having heard the lengthy submissions of both parties on the said date, this court postponed the matter to 12 May 2003 for decision on this preliminary issue. That is the only order made by this court on that day. On the *ad interim* injunction which was granted on the earlier date (26 March 2003) I find it unnecessary to make any order as the *ad interim* injunction is to operate till the disposal of the *inter partes* application. In this respect, a passage from the decision of Am Bhattacharjee J in *Jagjit Singh Khanna v. Dr. Rakhal Das Mullick & Anor* AIR [1988] Cal 95 quoted by His Lordship Low Hop Bing J in *Jacob Renner (an infant suing through his father and next friend, Gilbert Reinner) & Ors v. Scott King, Chairman of Board of Directors of the International School of Kuala Lumpur & Ors* [2000] 3 CLJ 569 would be in place to support the above view. It was said in the following words:

> A temporary injunction may as it very often does, consist of two stages, one granted without finally disposing of the application for injunction to operate immediately till the disposal of the said application and the other granted while finally disposing of the main application to endure generally till the disposal of the suit and while the former is generally classed as *ad interim* injunction, the latter is generally called temporary injunction. Neither on principle nor on authority we find any bar to the courts granting *ad interim* injunction till the disposal of the application for the temporary injunction.

As disclosed from the facts above, the application, *vis a vis* the *inter partes* hearing is far from over. It has not even been heard yet. The hearing on 23 April 2003 was solely on the preliminary issue and thus when the court postponed the matter to the next date of 12 May 2003 it goes without saying that the *ad interim* injunction granted earlier will endure at least to the next date should the application be disposed of on that date.

The power of this court to grant an *ad interim* injunction is well recognised and that it is meant for instances where the hearing of the *inter partes* application is still pending. Abdul Hamid Mohamad JCA in *RIH Services (M) Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd* [2002] 3 CLJ 83 at p. 91 said:

> ... he clearly had the jurisdiction to consider whether or not to grant an *ad interim* injunction pending the hearing *inter partes* of the application.

Further down, in the same judgment His Lordship says:

> In this country, Low Hop Bing J has also granted an *ad interim* injunction pending the hearing of an application for an interim injunction which was to be heard *inter partes* ... That way, the *status quo* is preserved after the expiry of the *ex parte* order until the *inter parte* hearing of the application.

The above quoted passages clearly set the principle that an *ad interim* injunction is meant for the period pending the disposal of the application and it will endure till the final disposal of the application. By the same token it would therefore be superfluous for the court to order and say categorically at each and every postponment (as happened in this case) that the *ad interim* injunction is to continue and be prolonged till the final disposal of the application. Thus I am of the considered view that the order of this court made on 23 April 2003 deferring its decision on the preliminary issue and postponing the matter to another date and in not making any order or reference to the ad interim injunction is not erroneous and is certainly within the powers of this court to so order. And I further hold that the ad interim injunction does not automatically lapse and/or expire on that date.

Before I conclude, in respect of the adjournment of the matter, I am reminded of the question posed by the Federal Court in the case of *Insas Bhd v. Ayer Molek Rubber Co. Bhd.* [1995] 3 CLJ 328 at p. 338 where Eusoff Chin, Chief Justice said as follows:

As we know it, a court has a power to adjourn a hearing as is given to it under O. 35 r. 3 of the Rules of the High Court 1980. Mr SC Loh did not produce any authority to show us that a party may appeal against the order of a judge to adjourn the hearing of any matter before him. We ourselves are not aware of any case in which an appeal had been allowed to be made against an order of an adjournment for decision or further arguments of a case by even a magistrate. If this is allowed, an appeal will be filed for every adjournment made by a magistrate, sessions court judge, High Court judge, or even by the Court of Appeal, and the courts will be flooded with appeals on adjournments. The Court of Appeal in this case itself had done the same thing in this appeal. It had adjourned the hearing of the application for a fresh injunction twice, once from 24 July 1995 to 25 July 1995, and then again to 26 July 1995. Can these adjournments then be the subject of appeals of the Federal Court? At the most, frequent adjournments of a case for no good reason may be made as one of the grounds in an appeal proper. We are doubtful if an appeal can be sustained against an order of adjournment by a judge.